IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1946 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

DHRUV NALINCHANDRA NANDLAL

Versus

SHAH MANSUKHLAL GULABCHAND

Appearance:

Ms.KJ BRAHMBHATT for MR MD PANDYA for Petitioner

MR PC KAVINA for PM THAKKAR for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 06/07/98

ORAL JUDGEMENT

1. This is tenant's revision under Section 29(2) of the Bombay Rent Act, 1947 (for short "the Act").

2. The respondent filed a Suit for eviction of the

tenant revisionist on two grounds. The first was bonafide and reasonable requirement of the landlord to use the premises for himself. The second was that the tenant was in arrears of rent for more than six months which was not paid by him despite service of notice of demand and eviction. The rate of rent, according to the respondent, was Rs.50/- p.m.

3. The Suit was resisted by the tenant on numerous grounds upon which issues were framed.

4. The trial Court after considering the evidence adduced by the parties found that the landlord respondent failed to establish that the premises was reasonably and bonafide required by him. The trial Court further found that the tenant was not in arrears of rent for more than six months. Accordingly the Suit was dismissed.

5. An Appeal was preferred. The Appellate Court agreed with the trial Court that the premises was not reasonably and bonafide required by the landlord. The Appellate Court, however, found that more than six months rent was due from the tenant which he failed to pay inspite of service of notice of demand. The tenant's plea that he was entitled to the benefit of Section 12(3)(b) of the Act was not accepted by the lower Appellate Court on the ground that he was irregular in making deposit in the trial Court and in Appellate Court. Accordingly the Decree for eviction was passed. In view of the deposit made in the Court below no decree for arrears of rent was passed by the Appellate Court. It is, therefore, this revision.

6. The first contention of the learned Counsel for the revisionist has been that the notice of demand is illegal and invalid. An issue was framed regarding invalidity of the notice and the trial Court found that the notive was perfectly valid. This plea was also pressed in Appeal by the tenant - revisionist. The Appellate Court also found that the notice was valid. There is no finding that the notice of demand is invalid. Consequently the learned Counsel for the respondent argued that the invalidity of notice cannot be permitted to be argued in this revision. In reply to this the learned Counsel for the revisionist contended that since the requirements of Section 12(2) are not made out the notice is invalid and this legal plea can be raised in revision to show whether the Decree passed by the Appellate Court is in accordance with law or not.

7. Section 12(2) of the Act provides that no suit

for recovery of possession shall be instituted by a landlord against tenant on the ground of non-payment of the standard rent or permitted increase due, until the expiration of one month next after notice in writing of demand of the standard rent or permitted increase has been served upon the tenant in the manner provided in Section 106 of the Transfer of Property Act.

8. Thus, what the law requires is that the landlord is required to serve a written notice of demand upon the tenant and wait for a period of one month from the date of service. If during this period the rent is paid no suit for eviction can be filed. If, however, no rent is paid during this period, the suit for eviction can be filed.

9. The notice was read over to me. It clearly shows that the landlord has mentioned that Rs.900/- were due. The rate of rent was Rs.50/- p.m. The landlord further gave adjustment of Rs.475/- paid by the tenant from time to time. The total demand was for Rs.425/-. The demand was thus specific. There was further mention in the notice that the amount due is to be paid within a month of service of notice either to the landlord or to his Counsel. Thus, there was effective compliance of Section 12(2) of the Act. I am unable to agree with the contention of the learned Counsel for the revisionist that it should have been mentioned by the landlord in the notice that this is the last opportunity and the tenant should come forward and pay the arrears of rent. If the section itself does not oblige the landlord to make such mention giving last opportunity to the tenant to pay the rent the Courts can not legislate over Section 12(2) of the Act. The duty of the Court is to interprete particular section and since there is no ambiguity in the section and a specific notice of demand was served which remained uncomplied with the landlord discharged his obligation laid under Section 12(2) of the Act. Therefore, there is no invalidity in the notice of demand.

10. Next contention has been that since there was dispute regading standard rent Section 12(3)(a) of the Act is not attracted. On this point the lower appellate Court has rightly held that so called dispute regarding standard rent set out in the tenant's reply notice was not a bonafide dispute. If the dispute regarding standard rent raised by the tenant is not bonafide then it cannot be said that Section 12(3)(a) is not attracted. What was replied by the tenant is that the rent claimed is not correct and is excessive. No dispute was raised

that the rent is Rs.20/- p.m. This belated dispute set out in the written statement was resolved by the two Courts below by a concurrent finding that the agreed as well as standard rent was Rs.50/- p.m. Both the Courts below found that the dispute regarding standard rent was not bonafide. If there was no bonafide dispute regarding standard rent Section 12(3)(a) was rightly applied by the lower Appellate Court.

11. Another contention has been that since Rs.50/p.m. is exclusive for municipal tax and education cess. Hence Section 12(3)(a) is not applicable. However, from the pleadings of the parties and the findings of the two courts below it is clear that Rs.50/- p.m. was held to be agreed rent as well as standard rent. There is no whisper in the judgment of the two courts below that the tenant was obliged to pay municipal tax and education cess over and above Rs.50/- p.m. Consequently it cannot be said that there was any obligation on the part of the tenant to pay these taxes over and above the agreed rent. If this is so then it cannot be said that the rent was not payable monthly inasmuch as taxes and municipal cess are not paid every month. Thus, on this ground also Section 12(3)(a) cannot be said to be not applicable.

12. Another contention has been that the tenant revisionist was not irregular in payment of rent and that the arrears were also not due because on the first date of hearing the amount was deposited in the trial Court. Hence protection to the tenant under Section 12(3)(b) of the Act should have been given by the Appellate Court.

13. From the Judgment of the lower Appellate Court it emerges that the rent was due with effect from 16.3.1972 and the same arrears were demanded in the notice. The lower Appellate Court from the evidence on record concluded that the revisionist in response to the summons served on him appeared and filed written statement. Issues were framed on 9.10.1975. Thus the first date of hearing was 9.10.1975. The tenant did not appear and allowed the Suit to be decided ex-parte. In this way the amount of arrears of rent was not deposited on the first date of hearing. When the ex-parte decree was passed it was got set aside on the motion of the tenant. He then filed his written statement on 28.6.1978. Issues were framed again on 28.7.1978. First deposit was made by the tenant on the said date amounting to Rs.3875/-. The second deposit was made on 15.9.1978 and then on 19.1.1979. In the Appeal also there was no regular deposit of rent made by the revisionist. On 2.8.1983 the revisionist deposited Rs.2850/- in the Appellate Court

and thereafter did not deposit the same regularly. In view of this failure and keeping in view the various pronouncements of this Court and the Apex Court reported in A.I.R. 1976 Guj. 122, 19 G.L.R. 502, 19 G.L.R. 1007, 19 G.L.R. 1090 the court below rightly came to the conclusion that the tenant was not entitled to the protection given in Section 12(3)(b) of the Act. Consequently the lower Appellate Court did not commit any error of law in passing the decree for eviction. The Judgment and Decree of the lower Appellate Court, being in accordance with law, no interference is required by this Court. The revision is, therefore, liable to be dismissed.

14. There is thus no merit in this revision which is hereby dismissed. In the facts of the case the parties shall bear their own costs. Rule discharged. ad.interim relief vacated.

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